IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

WP(C).No. 2117 of 2005(B)

PETITIONER:

DR.T.BALACHANDRAN, AGED 56 YEARS,
S/O.V.C.CHANDU NAMBIAR, CIVIL SURGEON,
(RETD.) "PRABHA", T.C.ROAD,
KUTHUPARAMBA, KANNUR.

BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
PRINCIPAL SECRETARY, HEALTH DEPARTMENT,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1	TRAUE COPY OF LETTER DTD.24.7.2003.
EXT.P1(a)	REPLY DTD.27.1.2003.
EXT.P2	LEAVE APPLICATION DTD.10.7.2003.
EXT.P3	COVERING LETTER SENT ALONG WITH LEAVE APPLN.
EXT.P4	LEAVE SANCTAIONING ORDER DTD.4.12.2003.
EXT.P5	REVISED LEAVE APPLN. DTD.27.12.2003.
EXT.P6	COVERING LETTER SENT ALONG WITH EXT.P5.
EXT.P7	ORDER DTD.23.3.2004.
EXT.P8	REPRESENTATION DTD.20.9.2004.
EXT.P9	ORDER DTD.13.10.2004.

TRUE COPY

P.A.TO JUDGE

css/

K.BALAKRISHNAN NAIR,J

W.P.(C)NO.2117 of 2005

Dated this the 19th day of July, 2007

JUDGMENT

The petitioner who was a Civil Surgeon under the respondents retired from service on 30.10.2003 on superannuation. As preparatory to his retirement, he sought information regarding the leave available in his credit. The Accountant General by Ext.P1(a) communication dated 27.1.2003 informed that 216 days of earned leave are outstanding as on 27.4.2002 and 184 days of half pay leave are outstanding as on 12.8.2002. The petitioner submitted Ext.P2 application claiming eligible leave for three months from 1.8.2003 to 31.10.2003 as preparatory to retirement. The said application was allowed by the Director of Health Services by granting him earned leave for 192 days from 1.8.2003 to 31.10.2003. The petitioner did not specify what kind of leave should be granted to him. He only said eligible leave may be granted. But the leave sanctioning authority

proceeded on the assumption that leave applied for is earned leave. On realising the vagueness in his application, the petitioner submitted Ext.P5 second leave application on 27.12.2003 praying that he may be granted half pay leave commuted for 92 days from 1.8.2003 to 31.10.2003. He submitted Ext.P6 representation also praying to issue revised leave sanctioning order but the said application was rejected by the Government by Ext.P7 stating that as per the rules the request is not admissible. It is also stated that allowing such cases as a special case will lead to bad precedents. The petitioner submitted Ext.P8 representation before the Government praying to review that order. The same was rejected by Ext.P9 stating that no valid grounds were raised to review the earlier decision of the Government. So this writ petition is filed challenging Exts.P7 and P9.

2. The petitioner submits that he did not apply for earned leave but he only applied for eligible leave. When the sanctioning authority proposed to grant earned leave, the petitioner should have been informed regarding the irregularity in the leave

application and also the proposal to grant earned leave. Without doing that the leave was sanctioned illegally, it is submitted. The same was not corrected though a review petition was filed. The first respondent has filed a counter affidavit supporting the impugned proceeding. The petitioner has filed a reply affidavit reiterating his contentions.

3. Heard the learned counsel on both sides. I think, if the petitioner's application was defective, it should have been returned or rejected. There was no justification for allowing a different kind of leave. Now that the petitioner has already availed the leave, I think, the period should be treated as requested for by the petitioner. The technical stand taken by the Government cannot be upheld. A leave not applied for was granted by the Director of Health Services. The petitioner was entitled to be told that his application is going to be treated as an application for commuted leave and dealt with accordingly. Therefore the impugned order Ext.P7 is vitiated. The Government failed to correct the said mistake and rejected the petitioner's application on technical grounds by Ext.P7. The said stand was

reiterated in Ext.P9. So Exts. P7 and P9 are quashed. The Government is directed to allow Ext.P5 revised leave application within two months from the date of production of a copy of this judgment.

The writ petition is allowed as above.

K.BALAKRISHNAN NAIR,
JUDGE

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